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No. 89-1399

In The

Supreme Court of the United States

October Term, 1989

INTERNATIONAL SOCIETY OF KRISHNA CONSCIOUSNESS OF CALIFORNIA, et al.,

Petitioners,

v.

ROBIN GEORGE AND MARCIA GEORGE,

Respondents.

On Petition for Certiorari to the Court of Appeal, State of California Fourth Appellate District, Division One

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE NATIONAL ASSOCIATION OF EVANGELICALS, THE AMERICAN FORUM FOR JEWISH-CHRISTIAN COOPERATION, THE COUNCIL ON RELIGIOUS FREEDOM, and THE EVANGELICAL LUTHERAN CHURCH IN AMERICA, AS AMICI CURIAE IN SUPPORT OF GRANTING OF CERTIORARI

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Left unchecked, this case and several like it in the states pose a severe threat to religious liberty. Although in our system of federalism tort claims should normally be left to state courts, this case illustrates that the tort system itself is malfunctioning by injuring valuable federal constitutional rights secured under the religion clause of the first amendment.

This is due in large part to the imposition of punitive damages on unpopular religious organizations by juries whipped up into a frenzy of hostility to religious bodies sued by disgruntled former church members. It is especially ominous that the precedents that are emerging have been achieved against vulnerable minority religions, for the multi-million dollar judgment in this case implicates the very survival of a whole religious movement.

Amici have a concern that the skyrocketing awards in punitive damages during the past two decades reflect a culture of greed and fast wealth rather than a sense of justice or appropriate compensation for an injury. Whether punitive damages may ever be justified, amici have a grave concern that in the hands of uncontrolled jurors, they have become an instrument of persecution of unpopular religious minorities.

The petition for certiorari presents a question, clearly preserved on this record, whether the award of punitive damages in this case violates the first amendment and the due process clause. Pet. 24-29. Petitioners' discussion of

the negative impact of joint and several liability for punitive damages on religious organization, however, is limited to a brief footnote. Pet. 26, fn. 21. Amici file this motion to underscore that this rule is especially bad in the setting of denominations like the petitioners with a congregational polity, where there is no central organizational control.

Amici urge this Court to examine this case in order to announce appropriate limits to the imposition of punitive damages on religious organizations. For example, the case serves as an apt vehicle to clarify that the state interest in awarding punitive damages to a fully compensated plaintiff is not substantial or compelling.

Whether a majority of the Court finds that the standardless award of punitive damages here violates the due process clause, the award of excessive punitive damages violates the free exercise clause because it serves no compelling state interest of paramount importance. The award sustained below violates the free exercise clause for the additional reason that more reasonable and less destructive alternatives are readily available.

Amici are major religious organizations or civil rights organizations that pay special attention to the abridgment of the first of our civil liberties protected under the first amendment, religious freedom. The filing of this brief does not imply that the amici agree with the doctrines and practices of the petitioners; we do, however, defend their right to embrace them freely and without undue governmental restraint. Amici are guided by a golden

rule in matters of religious freedom, desiring for others the same freedoms they wish to enjoy themselves. In the words of the Williamsburg Charter, a bicentennial document celebrating religious liberty, "Rights are best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves."

The particular statements of interest of the amici follow. The National Association of Evangelicals (NAE) is a non-profit association of evangelical Christian organizations, including fifty thousand churches from seventy-seven denominations. NAE, which represents a constituency of fifteen million people, serves a broad cross-section of churches for the purpose of a united voice and action.

The American Forum for Jewish-Christian Cooperation (AFJCC) is a civic organization engaged in a nationwide program of interreligious dialogue and education. It enlists each Christian and Jew who values his or her specific faith and heritage, without compromise of conscience. While preserving distinctive religious differences, the AFJCC seeks to foster mutual understanding and cooperative efforts. Working together to build better relationships among people of all religions, races and nationalities, the AFJCC's operation is civic and social, although the roots of the brotherhood which it seeks to build rests in the moral law and in religious faith.

The Council on Religious Freedom (Council) is a nonprofit corporation formed to uphold and promote the

principle of religious liberty. The Council's objectives and purposes include promoting the constitutional principle of free exercise of religion, opposing any encroachment by governmental agencies, including the judicial branch of government, which would limit or tend to inhibit such exercise, and responding to other acts interfering with the full experience of religious freedom. The Council is a membership organization, with dues-paying members throughout the United States. The Board of Directors is composed of individuals who are active in religious affairs. Some of the Directors serve in an official capacity in a religious organization, others on a lay basis. All the Directors recognize the importance of preserving and promoting the right of religious organizations to carry out their ministries free from governmental intrusion, whether that interference be from the executive, legislative, or judicial branches of the government. The Council speaks to the legal issues raised by this litigation not because it supports the doctrine or practices of the Hare Krishnas, but because "heresy trials" are coming into vogue particularly against disfavored religious groups and because punitive damages have now become a weapon to destroy churches in violation of the protections of the first amendment.

The Evangelical Lutheran Church in America (ELCA) is the largest Lutheran and the fourth largest Protestant body in the United States. It has approximately eleven thousand member congregations which, in turn, have 5.3 million individual members. While rejecting the tenets of Krishna Consciousness and deploring the deception by

church officials in this case, the ELCA joins in this brief because of the serious threat posed to all churches by the imposition of punitive damages in this case.

Amici have filed with the Clerk the written permission of the counsel of record for the petitioners, of respondent Roy Richard, and of counsel for respondent Nico Kuyt, to file this brief. This motion is required under Rule 37.2 because counsel of record for the respondents has refused consent. For the reasons submitted in this motion and the attached brief, amici respectfully urge this Court to grant this motion and to issue the writ in this case.

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QUESTION PRESENTED

Whether the religion clause of the first amendment restrains the operation of state tort law from inflicting severe injury upon a bona fide religious community:

(a) where the injury complained of is non-physical and was caused by only a few members of that community,

(b) where the verdict is obtained by improper appeals to jurors' bias against sincerely held but unfamiliar religious practices,

(c) where punitive damages are imposed on a joint and several basis against an entire religious community, including thousands of innocent believers,

(d) where the punitive damages assessed are wholly disproportionate to the alleged wrongdoing,

(e) where the practical effect, if not the manifest purpose, of the award of damages is to take away schools and houses of worship essential to the operation of an entire religious community in this country, and

(f) where there are readily available alternative remedies for tort injuries that are more reasonable and less destructive of religious freedom than the award of standardless punitive damages.

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BRIEF AMICUS CURIAE

I. The Imposition of Punitive Damages on a Religious Organization Violates the Free Exercise Clause

A. The Imposition of Punitive Damages on ISKCON Constitutes a Severe Burden on Protected Activity

This case is a classic illustration of why the first amendment religion clause sets limits on majoritarian impulses. Invited repeatedly to *punish* the petitioners for their strange religious beliefs and practices, the jury did just that. They awarded over $32 million in punitive damages against ISKCON.[1]

Both the trial court and later the court of appeal reduced that sum. But where things now stand, the sacred temples, ashrams, and schools of the petitioners are on the chopping block. They will be seized and sold by the receiver appointed by the trial court unless this Court intervenes. Indeed, on March 16, 1990, the trial court entered a minute order directing the receiver to sell "sufficient assets to satisfy plaintiffs' judgment in the amount of $2,985,000 and deliver said sum to plaintiffs forthwith." That sum includes punitive damages in the

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[1] The verdict in this case is one of many huge awards of punitive damages against unpopular religious movements for non-physical injuries such as intentional infliction of emotional distress in suits brought by former church members. See, e.g., *Church of Scientology v. Wollersheim*, cert. pending, No. 89-1361 ($2.5 million); *Church Universal & Triumphant, Inc. v. Witt*, cert. denied, No. 89-672 ($1.5 million); *O'Neil v. Schuckardt*, 733 P. 2d 693 (Idaho 1986) ($1 million); and *Guinn v. Church of Christ of Collinsville*, 755 P. 2d 766 (Okla. 1989) ($390,000).

amount of $2.5 million. With interest, which has been accruing at the rate of 10% since 1983, petitioners are liable for a sum well in excess of $5 million.

The geometric growth of punitive damages has become a problem of enormous dimensions in today's litigious society. In both of its last two terms this Court has grappled with claims that punitive damages violate the constitution. See, e.g., *Browning-Ferris Industries v. Kelco Disposal, Inc.* 109 S. Ct. 2909 (1989); *Bankers' Life & Casualty Co. v. Crenshaw*, 108 S. Ct. 1645 (1988).[2] The constitutionality of punitive damages, however, is far from settled. Indeed, the opinion of the Court of Appeal invited further attention by this Court to this very issue. The lower court recognized "that standardless discretion in the award of punitive damages may implicate constitutional concerns," but chose to await "further action" by this Court. Pet App. 75a. The issue is sufficiently troubling that this Court has recently granted review in another case involving punitive damages in a commercial setting. *Pacific Mutual Life Ins. Co. v. Haslip*, cert. granted, April 2, 1990, No. 89-1279. It makes no sense to open a window of opportunity to for-profit corporations on this issue and to slam the door on not-for-profit religious corporations that face forfeiture of their houses of worship as a result of this harsh penalty.

Whatever the liability of the Hare Krishnas for the torts alleged against some of their leaders, see Part II-A

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[2] Other recent cases bringing a claim of the unconstitutionality of punitive damages to this Court include *Clardy v. Sanders*, cert. denied, No. 89-440, 110 S. Ct. 376 (Nov. 6, 1989) and *Metromedia, Inc. v. April Enterprises, Inc.*, cert. denied, No. 88-625, 109 S. Ct. 3242 (July 3, 1989).

below, the first amendment forbids our courts from imposing so severe a penalty on an entire religious movement simply because its enemies cast their hostility in the form of a tort. In the First Congress, Representative Daniel Carroll of Maryland announced his support for the proposed First Amendment since "the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand." 1 *Annals of Congress* 757 (Aug. 15, 1789). Neither will religious freedom survive the crushing blow of punitive damages.

Petitioners have met the threshold test in free exercise cases, for the imposition of punitive damages on a religious body in an amount that exceeds the identifiable assets of that religious body surely constitutes a "significant burden" on the autonomy and integrity of that religious body. See, e.g., *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 303 (1985); *United States v. Lee*, 455 U.S. 252, 256-257 (1982); and *Sherbert v. Verner*, 374 U.S. 398 (1963).

This case presents a far graver burden on free exercise than any of the cases this Court has recently considered. Unlike the sales and use tax imposed on the distribution of religious literature in *Jimmy Swaggart Ministries v. California State Board of Equalization*, 110 S. Ct. 688 (1990), the confiscation of temples and monasteries essential to the practice of Krishna Consciousness is truly destructive of that faith. Unlike *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988), this case does not involve the use of the government's own property. Unlike *Bowen v. Roy*, 476 U.S. 693 (1986), this case does not involve an attempt by a religious claimant to tell the

government how to run its own internal operations. On any fair assessment of this case, the threatened forfeiture of petitioners' temples, ashrams and schools constitutes a severe burden on the free exercise of religion. Indeed, it is nothing short of "prohibitive" of the free exercise of religion, *Northwest Indian Cemetery Protective Ass'n*. It is "destructive" of the practice of religion, *Jimmy Swaggart Ministries*. Accordingly, this case is governed by the cases affording heightened judicial scrutiny to the protection of religious beliefs and practices; see, e.g., *Thomas v. Review Bd.*, 450 U.S. 770, 717-718 (1981); *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972); *Sherbert v. Verner*, 374 U.S. 398, 406-409 (1963).

B. The Imposition of Punitive Damages on ISKCON Did not Serve a Truly Compelling State Interest, But Only the Private Advantage of a Disgruntled Former Church Member

This case serves as an apt vehicle for this Court to confirm its teaching that a religious claimant may be overborne only on a showing that this imposition of the burden serves a truly *compelling state interest* overriding the freedom of the religious claimant. See, e.g., *Thomas v. Review Bd., supra*, 450 U.S. at 717-718; *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972); *Sherbert v. Verner, supra*, 374 U.S. at 406-409; and *Thomas v. Collins*, 323 U.S. 515, 530 (1945). In the words of the Williamsburg Charter: "Limitation upon religious liberty is allowable only where the State has borne a heavy burden of proof that the limitation is justified – not by any ordinary public interest, but by a

supreme public necessity – and that no less restrictive alternative to limitation exists."[3]

Amici readily acknowledge that the state has a legitimate interest in operating a tort system to redress injuries. The interest of the state in operating a tort system, however, may diminish as it is applied to religious organizations. Just as the state's interest in the common law of defamation may have to yield when it unduly burdens free speech, *New York Times v. Sullivan*, 376 U.S. 254 (1964), the common law may also have to yield when it unduly burdens free exercise of religion. Some exercises of religious faith are undoubtedly entitled to absolute immunity from civil liability. For example, the preaching of a sermon may cause distress among its hearers – it may even be intended to induce severe emotional distress[4] – but that should not give rise to a cause of action. The freedom of the churches to engage in their ministry would be severely eroded by a rule that would allow

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[3] Since this is a tort claim rather than a criminal matter, the State is not a party to the proceedings. That does not mean that there is no state action here, see *New York Times v. Sullivan*, 376 U.S. 254, 265 (1964), but simply that a plaintiff using the coercive authority of the court system must undertake to show why the interest they bring to court are truly compelling and cannot be served by alternatives less restrictive of religious liberty.

[4] See, e.g., the famous sermon of Jonathan Edwards, "Sinners in the Hands of an Angry God," preached at Enfield, Massachusetts in 1740, at the peak of the Great Awakening. 1 *Annals of America* 423 (1968). See also S. Ahlstrom, *A Religious History of the American People* 301 (1972) ("those who have internalized Auschwitz and Hiroshima may find the Enfield sermon less absurd than many intervening commentators").

recovery of millions of dollars in punitive damages because a preacher had intentionally inflicted emotional distress on members of a congregation in a sermon. See, e.g., *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953). On the other hand, amici do not claim that, as a matter of constitutional right, religious bodies are totally immune from liability for damages arising out of the conduct of their religious mission.[5] For example, churches do not as a general rule enjoy charitable immunity for torts which – unlike the present case – involve physical injury.

In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 348-350 (1974), this Court expressly ruled that the state interest in awarding punitive damages to a *fully compensated* plaintiff is not substantial or compelling. This Court has clarified that even compensatory damages for emotional injuries are not to be lightly presumed. *Carey v. Piphus*, 435 U.S. 247 (1978). A fortiori, the award of punitive damages should not be made by picking numbers from passing box cars or by calculating the distance to the nearest star. When modern courts allow the sky to be the limit for such damages, the ancient law of the talion[6] looks pretty good by comparison.

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[5] See, e.g., *Rayburn v. General Conference of Seventh-day Adventists*, 772 F. 2d 1164, 1171 (4th Cir. 1985), cert. denied, 106 S. Ct. 3333 (1986): "Like any other person or organization, [churches] may be held liable for their torts and upon their valid contracts [and] their employment decisions . . . where the decision does not involve the church's spiritual functions."

[6] In ancient Israel this law functioned as a limit for the award of monetary compensation for injuries. See, e.g., D. Patrick, *Old Testament Law* (1984).

This is not to say that it is inconceivable that religious bodies might ever be liable for punitive damages under some circumstances. But they surely are inappropriate where, as in this case, the penalty imposed is so clearly destructive of free exercise of religion, and where the state's interest in deterring unlawful conduct is limited because the border between constitutionally protected activity and unprotected activity is not always easy to discern. See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).

Five members of this Court have recently indicated grave doubts about the legitimacy of a state's interest in allowing the imposition of excessive punitive damages in a commercial context. See, e.g., *Browning-Ferris Industries v. Kelco Disposal, Inc.* 109 S. Ct. 2909, 2923 (1989) (Brennan, J., joined by Marshall, J.); *id.* at 2924 (O'Connor, J., joined by Stevens, J.); *Bankers' Life & Casualty Co. v. Crenshaw*, 108 S. Ct. 1645, 1656 (1988) (O'Connor, J., joined by Scalia, J.). Whether or not the state interest in punitive damages is ever legitimate in the face of runaway awards of staggering sums, no such state interest ranks as truly "compelling" or of "paramount significance" when the award is made against a *religious body* because of its efforts either to share its religious message or to protect a genuinely voluntary religious conversion. This issue is ripe for review by this Court.

C. The Imposition of Punitive Damages on ISKCON Was Not the Alternative Least Restrictive of Religious Freedom

Similarly, this case affords this Court the opportunity that the burden imposed on a religious claimant must be

the *alternative least restrictive* of religious liberty. See, e.g., *Thomas v. Review Bd., supra,* 450 U.S. at 718-719; *Yoder, supra,* 406 U.S. at 225; *Sherbert, supra,* 374 U.S. at 407; and *Shelton v. Tucker,* 364 U.S. 479, 487-490 (1963). There is no evidence in this record to support the conclusion that the imposition of punitive damages against the petitioners was the only alternative available to the plaintiffs to effectuate any claim for which they may be entitled to relief.

Whatever the responsibility of ISKCON for injury resulting to the George family from its acts and omissions, there are readily available alternative remedies for such injury that are more reasonable and less destructive than the award of punitive damages in this case. The petitioners have suggested that the Court import the standard of actual malice governing media defendants sued for defamation or intentional infliction of emotional distress. Pet. 13. Another alternative would be to abolish the imposition of punitive damages against organizations protected by the first amendment. Several commentators have urged this result.[7] This alternative would still serve

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[7] See, e.g., Lieberman, *Constitutional Limitations upon the Imposition of Punitive Damages against Churches and Religious Institutions* in *Tort and Religion* (Proceedings of Conference sponsored by the American Bar Association Section on Tort and Insurance Practice and Section of Individual Rights and Responsibilities, San Francisco, May 4-5, 1989) 313-25. The Pulitzer prize-winning journalist Anthony Lewis of the New York Times has suggested that punitive damages should not be allowed at all in defamation cases against media defendants. Lewis, *New York Times v. Sullivan Reconsidered: Time to Return to the Central Meaning of the First Amendment,* 83 Colum L. Rev. 603, 617 (1983). Another commentator has suggested that the Supreme Court should extend the rationale in *Gertz* to

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the state's interest in affording effective redress for actual injuries, but it would bar windfall recovery by private plaintiffs. Since this Court indicated in *Gertz* that the government has no substantial or compelling interest in such bonanzas, limiting recovery by a plaintiff suing a church to *actual loss* caused by allegedly tortious conduct is an alternative that should normally serve the government's interests in operating a tort system quite adequately.[8] Another alternative would be to allow recovery

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nonmedia defendants where an allegedly defamatory falsehood is published by the press. See, e.g., Eaton, *The American Law of Defamation Through Gertz v. Robert Welch, Inc., and Beyond: An Analytical Primer*, 61 Va. L. Rev. 1349, 1417 (1975). See also Smolla, *Let the Author Beware: The Rejuvenation of the American Law of Libel*, 132 Pa. L. Rev. 1, 92 (1983); Robertson, *Defamation and the First Amendment: In Praise of Gertz v. Robert Welch, Inc.*, 54 Tex. L. Rev. 199, 215 (1976); Note, *Punitive Damages and Libel Law*, 98 Harv. L. Rev. 847 (1985); Comment, 28 Vand. L. Rev. 887, 897 (1975). See also generally Casey, *The Case Against Punitive Damages*, 11 The Forum 57, 60 (1981), and Ghiardi, *The Case Against Punitive Damages*, 8 The Forum 411 (1978).

[8] The jury awarded $1.5 million in compensatory damages to Robin George for the tort of false imprisonment (CT 2121), $75,000 for the wrongful death of her father (CT 2115), $250,000 for intentional infliction of emotional distress (CT 2119), and $2,500 for libel (CT 2117). Her mother, Marcia George, was awarded $10,000 for libel and $1.5 million for intentional infliction of emotional distress (CT 2119). Amici do not support all of these awards of compensatory damages. Indeed, the court of appeal has already thrown out all of Robin George's claims for damages on state tort law grounds and because of the voluntary character of her own participation in the concealment of her whereabouts from her parents. But amici merely note that in financial terms compensatory damages are less burdensome than punitive damages. Amici do

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of punitive damages against a religious body only where there is credible evidence that the religious body has engaged in *physical* injury rather than mere *emotional* harm. See, e.g., *Paul v. Watchtower Bible & Tract Society*, 819 F.2d 875, 883 (9th Cir.), cert. denied, 484 U.S. 926 (1987).

In any event, the award of punitive damages under the circumstances of this case violates the Free Exercise clause. If the behavior of the jury and the bench in this case is consistent with the "benevolent neutrality" toward all religions required under the first amendment, *Walz v. Tax Comm'n of the City of New York*, 397 U.S. 664, 669 (1970), amici dread to think what real hostility looks like. This Court should grant the writ to draw a plain, easily grasped line between *compensating* a plaintiff for real injury caused by a religious body and *punishing* a church defendant for mistakes undertaken in defense of an authentic religious conversion.

II. What this Case is Not About

Finally, it might help to clarify some things that this case does not raise.

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not, moreover, contend that the free exercise clause requires the conclusion that there is absolutely no behavior of a religious body that could ever conceivably merit the imposition of punitive damages. We simply contend that this remedy is inappropriate under the circumstances of this case, where the state's interest in punishment is not sufficiently substantial to justify such a significant burden on free exercise as was imposed here, and where there is no showing that punitive damages are the least restrictive alternative.

A. Neither ISKCON nor amici claim a constitutional right to conceal a minor or to deceive parents about her whereabouts.

Despite respondents' attempts to depict this case as one dealing primarily with the destruction of normal family bonds, that characterization is a constitutional red herring. Neither the petitioners nor these amici claim a "constitutional right to conceal a minor or to deceive her parents about her whereabouts" (Pet. 9).[9] In the view of the amici, parents are normally due a very high measure of respect and support in their responsibility of parenting. Without condoning the concealment of Robin George from her parents, amici note that long before this case came to trial, the governing board of ISKCON reached a policy decision that minors would not be accepted into an ashram without the knowledge and consent of their parents. Because the first amendment protects voluntary religious conversions, we do not believe that ISKCON or any religious organization may be legally obligated to adopt a policy according parents an absolute veto over the religious observance of a mature minor. That ISKCON chose to do so reflects prudence and the kind of humility that enables one to learn from mistakes. In any event, ISKCON and all amici now concede the right of parents

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[9] Amici do not claim absolute constitutional immunity for religious organizations. To the contrary, amici note that religious bodies operating hospitals undertook as long ago as the 1940s to waive their charitable immunity in order to afford appropriate compensation to persons suffering physical injury caused by religious institutions. This case, of course, does not involve a claim of physical injury. See p. 6, *supra*.

to truthful information about the religious participation of their minor sons and daughters.

B. This case is not about the rights of minors too young to understand the religious messages presented to them.

Neither is this case about a minor too young to understand religious messages or make religious choices. The Court of Appeal expressly found that Robin "was a bright and gifted high-school student of above average intelligence and maturity." Pet. App. 32a. It is clear from the record that she freely chose to follow this religion herself.

Religious organizations follow varying practices with respect to teenage religious commitments. But it is quite common for teenagers younger than Robin was to make adult religious commitments. Examples include the sacred rites of initiation known as Bar Mitzvah and Confirmation, and the spiritual "coming of age" known as being "born again." See generally B. Spilka, R. Good, & R. Gorsuch, *The Psychology of Religion: An Empirical Approach* 203 (1985) (religious awakening occurs most frequently in adolescence); M. Argyle & B. Beit-Hallahari, *The Social Psychology of Religion* 61 (1975) (greatest number of conversions takes place at age 16 for boys, at age 15 for girls); *Children and Conversion* 14 (C. Ingle ed. 1970) (children received into membership in Southern Baptist church below age of 9). The Free Exercise Clause protects adolescents, and therefore it must protect the religions that adolescents choose.

CONCLUSION

For the reasons stated in this brief, amici urge this Court to grant the writ.

Respectfully submitted,

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